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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,901	09/19/2001	Norman J. Dovichi	45504-019	2915

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MCDERMOTT WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

EXAMINER

LUDLOW, JAN M

ART UNIT PAPER NUMBER

1743

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/936,901

Applicant(s)

DOVICH, NORMAN J.

Examiner

Jan M. Ludlow

Art Unit

1743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____


3. ☒ Applicant's reply has overcome the following rejection(s): Rejection under 35 USC 112, second paragraph is overcome.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-20, 22.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Jan M. Ludlow
Primary Examiner
Art Unit: 1743

1. Applicant's arguments filed October 16, 2003 have been fully considered but they are not persuasive.
2. Applicant argues that the time-based aliquot embodiment of WO does not teach a fraction in the sense of the instant invention, but points to no language requiring that a fraction is a single band and nothing more. The aliquots of WO are fractions based on timed collection, and since they have passed through the first separation means, they are the results of a separation process, contrary to applicant's argument.
3. Applicant then argues that the selected component-based aliquot embodiment of WO does not teach a fraction in the sense of the instant invention in that the instant fraction contains one or more components of interest, but points to no portion of WO requiring that the component is pure prior to the second separation, and fails to understand that even if the component of WO is pure, it constitutes a fraction as defined herein by containing "**one**" in the "**one** or more components" constituting a fraction as defined in the instant application.
4. The examiner notes that a typographical error exists in the previous office action, and claims 1-4, 10-14 should have been rejected under 35 USC 103(a) over WO. In that all the features of claims 13 and 14 are addressed in the rejection, it is clear that the claims were rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (703) 308-4039. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (703) 308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jan M. Ludlow
Primary Examiner
Art Unit 1743

Jml
November 1, 2003